

# ROYAL BOROUGH OF KENSINGTON AND CHELSEA

## Community Infrastructure Levy Examination

**Examiner:** Philip Staddon BSc, Dip, MBA, MRTPI

**Programme Officer:** Chris Banks

**Tel:** 01403 253148

**Email:** [bankssolutionsuk@gmail.com](mailto:bankssolutionsuk@gmail.com)

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Mr. Jonathan Bore  
Executive Director Planning and Borough Development  
Royal Borough of Kensington and Chelsea  
Kensington Town Hall  
Hornton Street  
London W8 7NX

7 July 2014

Dear Mr. Bore,

### **Royal Borough of Kensington and Chelsea - Community Infrastructure Levy Independent Examination**

I refer to your letter of 2 July 2014 sent in response to my letter of 27 June 2014 regarding the above. Having considered the points you have raised I wish to respond as follows, in the same order as your letter.

#### **Failings in Procedure**

##### First point

The agenda that I used covered all aspects of the CIL proposals including working through the modelling assumptions and the various appraisal documents. I made it very clear at the hearing sessions that I simply could not see how the mass of appraisal results had been refined and used to set the CIL rates. There was a discussion on this point and my suggestion that there had been a sifting / blending process was agreed. There seemed to be an acknowledgement that there was a substantial body of not particularly relevant results i.e. modelling developments against benchmark land values that were not prevalent, or simply did not exist, in particular charging zones.

It was agreed that the best way of taking this matter forward was through the clarification paper that I requested. I was assured, on a number of occasions in the hearing sessions, that that paper would provide the clarity I sought.

In the circumstances, it would be difficult for me to give the Council "prior insight" into my conclusions before the Council had clarified which of the vast number of appraisal results it was using to set its CIL rates.

##### Second point

You are correct that there is the option of receiving further evidence and keeping examinations open. Indeed, that is exactly what I did with your Council's proposals in affording the opportunity to evidence how the appraisal results had been used to inform and set the CIL rates.

However, as my letter of 27 June 2014 set out, I have concluded that there are fundamental problems with the Council's approach. These, in my view, cannot be readily addressed by discrete pieces of further evidence. It is the Council's responsibility to support its CIL proposals with appropriate and robust evidence.

#### Third point (affordable housing)

I am afraid I do not agree with your view that your evidence demonstrates that "large parts of the Borough" can support the proposed CIL rates and the policy compliant (50%) levels of affordable housing. Nor do I agree that the evidence suggests that viability issues "only affect the lowest value areas".

As you will recall, there are three tested scheme types that triggered the inclusion of affordable housing. They were labelled Site 3, Site 4 and Site 5 (Sites 1 and 2 being small schemes below the affordable housing threshold). Your Council's clarification evidence identified the most relevant benchmark land values (BMLV) for the respective proposed charging zones. On that basis, looking at the appraisal results that comply with the Core Strategy (CS) affordable housing policy (the 50% 'base' position), the following picture emerges:

Zone A (Knightsbridge) – 3 schemes – all viable

Zone B – 12 schemes – 6 not viable (including 1 not sufficiently viable).

Zone C – 3 schemes – 3 not viable

Zone D – 6 schemes – 3 not viable

Zone E – 6 schemes – 4 not viable

Zone F – 3 schemes – 3 not viable

Overall – 33 schemes – 19 not viable

The results suggest substantial viability issues across a range of sites and across 5 of the 6 zones.

Your letter alleges that I did not raise specific concerns about affordable housing content either before, or at, the hearing sessions. There are good reasons for this. First, the Council's own evidence states that 50% affordable housing is the 'base position' (paragraph 4.5 of the 2012 Viability Study) tested for CIL purposes. Second, I asked the question about affordable housing policy compliance at the hearing sessions and was assured this is what had been used (you may recall that we discussed the issues that arose through the Mid Devon CIL examination). Third, I reasonably expected the clarification evidence to demonstrate which (policy compliant) appraisals had informed the CIL rate setting.

Your current letter serves only to confirm that the Council has not applied its own affordable housing policies in setting the foundations of its CIL proposals. Indeed, your letter now seeks to submit further 'evidence' to convince me that I should accept a substantial departure from the CS 'base' position. That case was not made through the Council's evidence submissions, nor do I see any inconsistencies with other CIL examinations. Some flexibility and pragmatism is often necessary but my conclusion that the Council should have based its analysis on the foundation set out in its own recently adopted CS, is sound. The CS could not be clearer on the importance of affordable housing provision and its minimum target of 200 units per annum from 2011/12 to 2027/28. That

affordable housing is a key component of the 'development' across the borough upon which I must assess the impact of the CIL proposals.

This is a most unfortunate situation but it is a direct consequence of inconsistencies in, and the less than transparent nature of, the Council's evidence base. It is not a product of procedural failings, as you appear to allege.

I do appreciate the implications of my findings for the Council. I will return to possible ways forward later.

### **Outstanding Issues**

#### 1. The Council's reliance on strategic sites

The CS relies heavily on the Kensal site to deliver its planned housing requirements. Your letter does, in many respects, support the conclusions I have reached. In essence, the development economics associated with the site are quite different to other 'normal' development sites. Rather than recognise that and reflect it in its CIL proposals, the Council's approach simply includes it in a charging zone where it proposes CIL rates set by modelling 'normal' developments (Sites 1- 5) against benchmark land values. I am aware of the timing issues but that does not address my concerns about the possible impact of CIL on this critically important site.

#### 2. Relationship between CIL rates and affordable housing

See above under 'third point'

#### 3. Perceived differences in approach between the 2012 and 2014 viability work.

This matter is dealt with in my letter of 27 June. The Council could make this evidence more relevant by undertaking a BMLV analysis but this alone would not address the two fundamental concerns I have identified in my letter of 27 June.

#### 4. The Content of the Regulation 123 list

My letter of 27 June suggests that this list could be improved and the Council's commitment to do so before CIL collections commence is noted.

#### 5. Perceived complexity of the charging schedule

I did not include this as a 'fundamental' problem but it is a matter that the Council may wish to consider in reviewing how it takes its CIL proposals forward.

### **Conclusions / Way Forward**

I do appreciate your disappointment and frustration that I have concluded that I cannot currently support your Council's CIL proposals. I have not reached that conclusion lightly and I did consider, at length, whether there were opportunities to modify or seek further evidence to prevent outright rejection.

Whilst you appear to feel that this is a product of the examination process, I do not agree. If the evidence suggests that CIL setting has been based on policy

compliant affordable housing development scenarios and it then transpires that it has not, this does raise a fundamental issue. Similarly, if the evidence points to a critically important strategic site displaying different development economics to 'normal' sites, the failure to reflect that in the CIL proposals raises another fundamental issue.

My letter of 27 June 2014 requested whether you wished me to submit my finalised report. I am not able to agree to your demand that I withdraw my letter, which is a summary of the conclusions of my independent examination. I do recognise the practical difficulties and implications arising from my conclusions but I do hope this letter has helped to explain further my logical reasoning (even if you do not agree with it). I also hope that it explains why I concluded that the fundamental issues extended beyond the normal boundaries that I could reasonably address through recommended modifications, or through further evidence submissions.

However, I have considered further whether there is an alternative to complete withdrawal. There may be one option that you may wish to consider. You may wish to request that I suspend the examination for the time being whilst the Council seeks to address the issues I have raised. To address those issues the Draft Charging Schedule will, in my view, require formal modification (supported by refreshed evidence). That will require the drafting and publication of a Statement of Modifications. Following the publicity period, and consideration of any further representations received, the examination could be resumed, potentially without further hearing sessions (if there were no requests to be heard by representors). There may be some tension with the 2014 Guidance, which seeks to avoid 'substantive' changes through the Statement of Modifications procedure. However, in the circumstances where the modifications were seeking to address issues identified through the examination process, I would be minded to support such an approach.

Please would you consider if you wish to take up this option as an alternative to those I set out in my earlier letter. In order for me to agree a suspension I would need to have a satisfactory timetable from you, setting out when the stages of the necessary work would be undertaken so that the examination could be resumed. A period extending beyond six months is unlikely to be acceptable, given the uncertainties it would entail for the progress of the examination, and in any event I expect that your Council would wish to expedite matters. An early reply indicating how you wish to proceed would be most helpful.

Yours sincerely,

*P.J. Staddon*

Examiner